



AUSTRALIAN CAPITAL TERRITORY

Electoral (Amendment) Act (No. 2) 1997

No. 91 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Electoral (Amendment) Act (No. 2) 1997

No. 91 of 1997

An Act to amend the *Electoral Act 1992*

[Notified in ACT Gazette S380: 1 December 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Electoral (Amendment) Act (No. 2) 1997*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *Electoral Act 1992*.¹

Interpretation

4. Section 3 of the Principal Act is amended by inserting the following definition:

“ ‘official error’, in relation to a person voting or seeking to vote at an election, means the removal of the person’s name under this Act from the roll for an electorate in which the person is otherwise entitled to vote unless the name was so removed before the roll closed for the purpose of the previous election;”.

Functions of Electoral Commission

5. Section 7 of the Principal Act is amended by inserting in paragraph (1) (d) “, MLAs” after “political parties”.

Insertion

6. After section 9 of the Principal Act the following sections are inserted in Division 1 of Part II:

Annual reports

“10. The Electoral Commission shall be taken, for the purposes of the *Annual Reports (Government Agencies) Act 1995*, to be a public authority that has been given a direction under paragraph 8 (5) (a) of that Act.

Special reports

“10A. (1) The Electoral Commission may present to the Minister a report on any matter relating to elections, referendums or other ballots.

“(2) Where the Minister receives a report that is expressed to be presented under subsection (1), the Minister shall cause a copy of the report to be laid before the Legislative Assembly within 6 sitting days after the day on which he or she receives the report.”.

Investigation of objections

7. Section 49 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) At a public hearing, submissions to the augmented Commission may only be made—

- (a) by or on behalf of a person who made—
 - (i) an objection in accordance with section 46; or
 - (ii) a suggestion or comment concerning the proposed redistribution in accordance with the invitation under subsection 41 (1); or

(b) by a person making a submission in relation to an objection.”.

Supply of roll extracts in electronic form to MLAs etc.

8. Section 62 of the Principal Act is amended by omitting from paragraph (1) (a) “for the electorate to which the roll relates”.

Provision of roll information to prescribed authorities

9. Section 65 of the Principal Act is amended by omitting paragraph (5) (a) and substituting the following paragraph:

“(a) in relation to a person whose address is a suppressed address—any particulars other than the name of the person;”.

Joint roll arrangements with the Commonwealth

10. (1) Section 70 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Minister” and substituting “Chief Minister”; and
- (b) by inserting in subsection (2) “who are not enrolled as electors of the Territory” after “Commonwealth” (last occurring).

(2) The amendment of subsection 70 (1) of the Principal Act effected by this Act does not affect any arrangement in force immediately before the commencement of this Act.

Closed rolls

11. Section 80 of the Principal Act is amended by omitting from paragraph (1) (a) “6 p.m.” and substituting “8 p.m.”.

Objections to enrolment

12. Section 81 of the Principal Act is amended—

- (a) by inserting at the beginning of paragraph (3) (c) “subject to subsection (3A),”; and
- (b) by inserting after subsection (3) the following subsection:

“(3A) Where an elector objects to the enrolment of a person on the ground that the person is of unsound mind a deposit is not payable.”.

Refusal of applications

13. Section 93 of the Principal Act is amended by inserting in paragraph (1) (b) “not qualified to be an elector or is” after “is”.

Changes to register

14. Section 95 of the Principal Act is amended—

- (a) by omitting from subsection (2) “This Part” and substituting “Subject to subsection (3), this Part”; and
- (b) by adding at the end the following subsection:

“(3) Section 91 does not apply in relation to an application to change the particulars relating to the address of the registered agent of a political party.”.

Insertion

15. (1) After section 96 of the Principal Act the following section is inserted:

Registered officer—entitlement to office

“96A. A person is not entitled to become, or to continue to be, the registered officer of a party unless the person is or continues to be, as the case may be, qualified to be an elector.”.

(2) Where immediately before the commencement of this Act a person was the registered officer of a party and by virtue of section 96A of the Principal Act, as amended by this Act, the person ceased to be entitled to hold that office on and after that commencement, the person shall, notwithstanding that section but subject to subsection (3), be taken to be entitled to continue holding that office until—

- (a) the expiration of a period of 2 months after that commencement; or
- (b) the particulars relating to the registered officer of the party in the register kept under section 88 of the Principal Act have been changed;

whichever first occurs.

(3) Where, but for this subsection, the period referred to in paragraph (2) (a) would expire during the pre-election period, the person shall, notwithstanding section 96A of the Principal Act, as amended by this Act, be taken to be entitled to continue holding that office until the expiration of the pre-election period.

Deputy registered officer

16. Section 97 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) For the purposes of Part IX or X, a deputy registered officer of a party may be appointed—

- (a) except where paragraph (b) applies—by the registered officer of the party; or
- (b) where the office of registered officer of the party becomes vacant or the registered officer is otherwise unable to carry out his or her duties—by the secretary of the party;

by giving the Commissioner written notice, signed by the person making the appointment and the proposed deputy, specifying the name and address of the deputy.

“(1A) A person is not entitled to become, or to continue to be, a deputy registered officer of a party unless the person is or continues to be, as the case may be, qualified to be an elector.”.

Cancellation of registration

17. Section 98 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

“(3) Subject to subsection (3A), the Commissioner shall cancel the registration of a political party if it has not endorsed a candidate at the last 2 consecutive general elections.

“(3A) Subsection (3) does not apply to a political party unless it was registered at the time of each of those general elections.”.

Entitlement to vote

18. Section 128 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) The omission of the name of a person from a roll because of official error does not disqualify the person from voting.”.

Claims to vote

19. Section 133 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraphs:

- “(a) specifies the claimant’s name;
- (aa) specifies an address for the claimant or indicates that the claimant’s address is suppressed; and”.

Declaration voting at polling places

20. Section 135 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraph:

- “(a) the certified list of electors for the electorate does not specify the person’s name; or”.

Substitution

21. Section 136 of the Principal Act is repealed and the following Division heading and sections are substituted:

“Division 3A—Voting otherwise than at a polling place

Interpretation

“136. In this Division, unless the contrary intention appears—

‘eligible elector’ means an elector who is entitled to vote at an election and—

- (a) who expects to be unable to attend at a polling place on polling day; or
- (b) whose address is a suppressed address.

Postal voting before polling day

“136A. (1) In this section—

‘post’ means dispatch by means of Australia Post or a postal service specified under subsection (9);

‘postal voting papers’ means declaration voting papers for postal voting.

“(2) An application for postal voting papers shall be—

- (a) in the approved form;
- (b) signed and dated by the applicant in the presence of an authorised witness;
- (c) signed and dated by the witness; and
- (d) received by an authorised officer before 8 p.m. on the day before polling day.

“(3) Subject to subsections (4) and (5), an authorised officer shall, on application by an eligible elector, post to the elector postal voting papers for the electorate for which the person claims to vote.

“(4) Postal voting papers shall not be posted or otherwise made available to an elector earlier than the 19th day before polling day.

“(5) An officer shall not post postal voting papers to an applicant—

- (a) if the application is received by the officer after the last mail clearance at the nearest post office on the last Thursday before polling day; or
- (b) if the officer has reason to believe that the applicant is located in a place where the normal transmission of mail has been significantly disrupted or curtailed or is otherwise unreliable.

“(6) Where an authorised officer has received an application for postal voting papers for an eligible elector and the officer has reason to believe—

- (a) that the applicant is a person to whom paragraph (5) (a) or (b) applies; and
- (b) that dispatch of the papers to the elector by means of a courier or other agent (not being Australia Post or a postal service specified under subsection (9)) is likely to enable the papers to reach the elector in sufficient time for the elector’s ballot paper to be completed and lodged in accordance with subsection (8);

the officer shall dispatch the papers accordingly.

“(7) Where voting papers are dispatched to the elector in accordance with this section, neither the officer nor the Commissioner is responsible for ensuring that the papers reach the elector.

“(8) Subject to section 156, the following requirements apply in relation to the casting of a postal vote under this section:

- (a) the elector shall show the unsigned declaration and certificate, and the unmarked ballot paper to an authorised witness;
- (b) the elector shall complete and sign the declaration in the presence of the witness;
- (c) the witness shall complete and sign the certificate as witness;
- (d) the elector shall, in the presence of the witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope addressed to the Commissioner and fasten the envelope;
- (e) the elector shall—
 - (i) before polling day—post the envelope and contents to the Commissioner; or
 - (ii) on or before polling day—lodge the envelope and contents with the Commissioner or another officer.

“(9) The Commissioner, by writing, may specify a postal service instead of or in addition to Australia Post for the purposes of the definition of ‘post’ in subsection (1).

Ordinary or declaration voting in the Territory before polling day

“136B. (1) In this section—

‘relevant period’ means the period beginning no later than the 19th day before polling day and ending no later than 8 p.m. on the day before polling day.

“(2) This section applies where a person attends before an authorised officer during the relevant period and makes a declaration to the effect that he or she is an eligible elector.

“(3) Where this section applies, the officer shall issue a ballot paper to the elector for the relevant electorate if satisfied that the certified list of electors for the electorate—

- (a) specifies the claimant’s name;
- (b) specifies an address for the claimant or indicates that the claimant’s address is suppressed; and
- (c) has not been marked so as to indicate that a ballot paper has already been issued to the claimant.

“(4) Despite subsection (3), an officer shall not issue a ballot paper to a person who indicates that he or she has already voted at the election.

“(5) Immediately after issuing a ballot paper to a claimant, the officer shall record the issue on the certified list of electors.

“(6) Section 134 applies to the casting of an ordinary vote under this section as if—

- (a) it were a vote under section 133; and
- (b) a reference in that section to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.

“(7) Sections 120 to 123 (inclusive) apply in relation to polling under this section as if the place where that polling is conducted were a polling place.

“(8) Before any vote is taken under this section the OIC shall exhibit each ballot box empty and shall then securely fasten its cover.

“(9) At the conclusion of each day’s polling under this section and in the presence of any scrutineers the ballot boxes shall be closed and sealed.

“(10) At the beginning of the second and each subsequent day’s polling under this section and in the presence of any scrutineers the seals on the ballot boxes shall be examined and opened.

“(11) At the close of polling under this section, the OIC shall, in the presence of any scrutineers—

- (a) close and seal the ballot boxes containing ballot papers for ordinary voting or declaration voting;
- (b) parcel and enclose in sealed wrapping all unused ballot papers; and
- (c) parcel and enclose in sealed wrapping all other electoral papers used at the polling place.

“(12) The OIC shall give the articles referred to in subsection (11) to the Commissioner.

“(13) The Commissioner shall keep the articles referred to in subsection (11) in safe custody for the purposes of scrutiny under Part XII.

“(14) Ballot papers cast as ordinary votes under this section may only be removed from ballot boxes and counted after the close of polling on polling day.

“(15) Where this section applies and the authorised officer is satisfied that—

- (a) the certified list of electors for the electorate does not specify the person’s name; or
- (b) the certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to the person but the person claims not to have voted already at the election;

the authorised officer shall issue declaration voting papers to the elector.

“(16) Despite subsection (15), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the election.

“(17) Where an authorised officer issues declaration voting papers to the elector the officer shall—

- (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
- (b) record the name of the claimant.

“(18) Subsection 135 (4) applies to the casting of a declaration vote under this section as if—

- (a) it were a declaration vote under section 135; and
- (b) a reference in that subsection to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.

Declaration voting outside the Territory on or before polling day

“136C. (1) In this section—

‘relevant period’ means the period beginning no later than the 19th day before polling day and ending no later than the time that is 6 p.m. in the Territory on polling day.

“(2) This section applies where a person attends before an authorised officer outside the Territory during the relevant period and makes a declaration to the effect that he or she is an eligible elector.

“(3) Where this section applies, the authorised officer shall issue declaration voting papers to the elector.

“(4) Despite subsection (3), an officer shall not issue declaration voting papers to a person who indicates that he or she has already voted at the election.

“(5) Where an authorised officer issues declaration voting papers to the elector the officer shall—

- (a) give the claimant a statement in writing in the approved form indicating the consequences of casting a declaration vote under this section; and
- (b) record the name of the claimant.

“(6) Subsection 135 (4) applies to the casting of a declaration vote under this section as if—

- (a) it were a declaration vote under section 135; and
- (b) a reference in that subsection to an unoccupied voting compartment were a reference to an unoccupied part of the place at which the elector attends before the officer concerned.”.

Issue of voting papers to registered declaration voters

22. Section 141 of the Principal Act is amended by omitting all the words after “voter” and substituting “declaration voting papers for the election”.

Antarctic electors

23. Section 171 of the Principal Act is amended—

- (a) by omitting “An elector” and substituting “Subject to subsection (2), an elector”; and
- (b) by adding at the end the following subsection:

“(2) A person does not become an Antarctic elector for the purposes of an election under this Act where the person became an Antarctic elector for the purposes of the Commonwealth Electoral Act after the hour of nomination for the election.”.

Disclosure periods

24. (1) Section 201 of the Principal Act is amended by adding at the end of the definition of “disclosure day” in subsection (2) the following paragraphs:

- “(d) for a non-party group which contested the previous general election—the 31st day after polling day for that election; or
- (e) for a non-party group to which paragraph (d) does not apply—the earlier of the following days:
 - (i) the day on which the group publicly announced that it would contest the election;
 - (ii) the day on which the candidates comprising the group requested that their names be grouped on the ballot paper in accordance with section 115”.

(2) The amendments effected by subsection (1) also apply in respect of a general election held, a public announcement made or a request made in accordance with section 115, before the commencement of this section.

Appointed agents

25. Section 203 of the Principal Act is amended by adding at the end the following subsections:

“(3) Where a political party ceases to be registered under Part VII and immediately before ceasing to be registered a person held office under subsection (1), the person shall be taken to continue in that office for the purposes of this Part as if the party continued to be registered.

“(4) A person taken to be a reporting agent in accordance with subsection (3) or 204 (1A) shall be taken to continue in that office until the person, with the consent of the Commissioner, resigns from that office.”.

Non-appointed agents

26. Section 204 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Where a political party ceases to be registered under Part VII and there is no person taken to be the reporting agent in accordance with subsection 203 (3), the person who was the registered officer immediately before the party ceased to be registered shall be taken to be the reporting agent in relation to the political party for the purposes of this Part as if the party continued to be registered.”.

Dissemination of electoral matter—campaign stationery

27. Section 295 of the Principal Act is amended by omitting from paragraph (a) “car sticker,”.

Schedule 3

28. Schedule 3 to the Principal Act is amended—

(a) by omitting clause 6 and substituting the following clause:

“6. (1) In this clause—

‘relevant provision’ means—

- (a) in the case of a vote under section 135—subsection 135 (4);
- (b) in the case of a vote under section 136A—subsection 136A (8);
- (c) in the case of a vote under section 136B—subsection 135 (4) as applied by subsection 136B (18); or
- (d) in the case of a vote under section 136C—subsection 135 (4) as applied by subsection 136C (6).

“(2) This clause applies to a set of declaration voting papers if the officer is satisfied that—

- (a) the signature on the declaration is that of the elector;
- (b) the certificate by the witness is in accordance with the relevant provision;
- (c) in the case of a postal vote where the papers were posted to the Commissioner—the papers were so posted before the close of the poll; and
- (d) in the case of the vote of an Antarctic elector—the envelope referred to in paragraph 176 (1) (c) is endorsed and signed by an authorised officer in accordance with that paragraph.

“(3) For the purposes of paragraph (2) (b), where an officer referred to in subsection 135 (4) omits to sign the certificate, the certificate shall nevertheless be taken to be in accordance with the relevant provision, if—

- (a) the issue of the relevant declaration voting papers was recorded under Division 3 or 3A of Part X; and
 - (b) the OIC is satisfied the papers were properly issued to the elector.”;
- and

(b) by omitting subclause 9 (2).

Schedule 4—amendment of clause 7

29. Schedule 4 to the Principal Act is amended by adding at the end of clause 7 the following subclause:

“(4) Where—

- (a) a person becomes the relevant candidate by virtue of subparagraph (3) (c) (ii);
- (b) the ballot papers are recounted in accordance with section 187; and
- (c) the same candidates would, but for this subclause, become the contemporary candidates once again by virtue of that subparagraph;

the person shall be taken to be the relevant candidate for the purposes of subclause (2) in the recounting of those ballot papers.”.

Schedule 4—amendment of clause 8

30. Schedule 4 to the Principal Act is amended by adding at the end of clause 8 the following subclause:

“(3) Where—

- (a) a person is excluded by virtue of paragraph (2) (b);
- (b) the ballot papers are recounted in accordance with section 187; and
- (c) that paragraph would, but for this subclause, be applicable once again to the same candidates;

the person shall be taken to be excluded in the recounting of those ballot papers.”.

Schedule 4—amendment of clause 17

31. Schedule 4 to the Principal Act is amended by adding at the end of clause 17 the following subclause:

“(3) Where—

- (a) a person is a candidate in relation to more than 1 casual vacancy;
- (b) the person becomes a candidate in relation to those casual vacancies before the Commissioner declares elected the successful candidate in relation to any of those casual vacancies; and

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(c) the person is successful in relation to 1 of those casual vacancies;
for the purpose of conducting the recount in relation to the casual vacancies other than the one in relation to which the person was successful, the person shall be taken not to be a continuing candidate.”

Further amendments

32. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 32

FURTHER AMENDMENTS

Section 3 (definition of “declaration vote”)—

Omit “Division 3 of Part X”, substitute “section 135 or 136A, subsection 136B (12) or section 136C”.

Section 3 (definition of “postal vote”, paragraph (a))—

Omit “subsection 136 (4)”, substitute “subsection 136A (2)”.

Section 3 (definition of “staff”)—

(a) Omit “27A” from paragraph (a), substitute “31”.

(b) Omit “27B” from paragraph (b), substitute “32”.

Paragraphs 131 (1) (a) and (b)—

Omit the paragraphs, substitute the following paragraph:

“(a) cast a vote in accordance with Division 2, 3 or 3A; or”.

Heading to Division 2 of Part X—

Add at the end “*at a polling place*”.

Heading to Division 3 of Part X—

Add at the end “*at a polling place*”.

Subsection 137 (1)—

Omit “declaration voting papers under section 136”, substitute “voting papers under section 136A, subsection 136B (12) or section 136C”.

Subsection 139 (1)—

Omit “declaration voting papers in respect of a declaration vote cast under section 136”, substitute “voting papers in respect of a vote cast under section 136A”.

Subsection 143 (2)—

Omit “paragraph 136 (4) (a)”, substitute “paragraph 136A (2) (a)”.

Paragraph 178 (3) (e)—

Omit “marked”, substitute “recording votes”.

SCHEDULE—continued

Section 291 (definition of “polling place”, paragraph (b))—

Omit “declaration vote may be made before an officer”, substitute “vote may be made before an officer under section 136B or 136C”.

Subsection 303 (6) (definition of “polling hours”, paragraph (b))—

Omit “declaration” (wherever occurring).

Paragraph 307 (5) (a)—

Omit “declaration vote may be made before an officer”, substitute “vote may be made before an officer under section 136B or 136C”.

Subsection 320 (6) (definition of “voting centre”, paragraph (a))—

Omit “declaration vote may be made before an officer”, substitute “vote may be made before an officer under section 136B or 136C”.

NOTE

Principal Act

1. Reprinted as at 31 January 1996. See also Acts Nos. 56 and 85, 1996; No. 38, 1997.

[Presentation speech made in Assembly on 23 September 1997]